

Amendment No. 305

Senate Amendment to Senate Bill No. 99 (BDR 52-127)

Proposed by: Senate Committee on Commerce, Labor and Energy**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from S.B. 99.

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

MSN/TMC



Date: 4/18/2011

S.B. No. 99—Makes various changes concerning consumer protection.

(BDR 52-127)



SENATE BILL NO. 99—SENATOR HARDY

PREFILED JANUARY 25, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes concerning consumer protection.
(BDR 52-127)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to consumer protection; requiring ~~[the Consumer Affairs Division of the Department of Business and Industry to regulate the activities of grant writing services that do business in this State; requiring a]~~ ***certain*** grant writing ~~[service]~~ ***services*** to register ~~[and deposit security]~~ with the ~~[Division before doing business in this State;]~~ ***Director of the Department of Business and Industry; requiring the Director to publish a list of registered grant writing services on an Internet website maintained by the Director;*** requiring a grant writing service to provide certain statements to a buyer before the execution of a contract for grant writing services; prescribing certain mandatory terms of a contract for grant writing services; ~~[revising the definition of “goods and services” as that term relates to solicitations by telephone; revising criminal penalties for violations of provisions relating to solicitations by telephone;]~~ providing penalties; ~~[providing a fee;]~~ and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

~~[Assembly Bill No. 561 of the 2009 Legislative Session temporarily eliminated the Commissioner of Consumer Affairs and the Consumer Affairs Division of the Department of Business and Industry for the 2009-2011 biennium. (Sections 3 and 4 of chapter 475, Statutes of Nevada 2009, pp. 2696-97) As a result, the Attorney General assumed sole responsibility for the enforcement of the provisions of chapter 598 of NRS governing deceptive trade practices and the provisions of chapter 599B of NRS governing solicitations by telephone. Effective July 1, 2011, the Commissioner of Consumer Affairs and the Consumer Affairs Division will be restored and will again share responsibility for the enforcement of these provisions with the Attorney General.]~~

~~[Section 24 of this bill revises the definition of “goods or services” for the purpose of the provisions governing solicitations by telephone to clarify that the term includes, without limitation, any service, loan or any other extension of credit, insurance or any investment or opportunity for investment.]~~

~~[Existing law provides for graduated penalties for willful violations of the provisions governing solicitations by telephone. A person who willfully violates such provisions is guilty of a misdemeanor for the first offense within 10 years. For the second offense within 10 years,~~

the person is guilty of a gross misdemeanor. For the third and all subsequent offenses within 10 years, such a person is guilty of a category D felony and is subject to imprisonment, a fine of not more than \$50,000, or both imprisonment and a fine. (NRS 599B.255) Section 25 of this bill makes any willful violation of the provisions governing solicitations by telephone a category B felony, punishable by imprisonment, a fine of not less than the amount lost by all buyers who are injured by the violation plus an additional amount of not less than \$10,000 and not more than \$50,000, or by both imprisonment and a fine.]

Sections 2-23 of this bill create provisions governing grant writing services in this State and vest the ~~[Commissioner and the Division]~~ Director of the Department of Business and Industry with authority to enforce these provisions. Section 7 defines "grant writing service." ~~[Sections 9 12 and 14 establish registration requirements for grant writing services, including the payment of a registration fee, and requirements concerning the deposit of security with the Division.]~~ Section 9 requires certain grant writing services to register with the Director, but exempts from the provisions of sections 2-23 certain grant writing services that offer services relating to affordable housing and community development projects. Section 9 also requires the Director to publish a list of registered grant writing services on an Internet website maintained by the Director.

~~Section 13 prohibits a grant writing service from engaging in certain activities. [Section 15 requires a grant writing service to provide certain written statements to a buyer before the execution of a contract or before the receipt of any payment by the grant writing service.]~~ Section 16 establishes certain requirements for a contract for grant writing services. ~~[Section 17 sets forth the circumstances which create an irrefutable presumption that a person intends to do business and is regularly conducting business in Nevada. Section 20 provides a remedy for any buyer injured by a grant writing service, and section 21 provides that a person who violates sections 2-23 is guilty of a category B felony.]~~ Section 22 authorizes the Director to take certain actions if a person violates the provisions of sections 2-23 and provides that such a violation is a deceptive trade practice. Section 23 requires the ~~[Division]~~ Director to adopt regulations to carry out the provisions of sections 2-23.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 598 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this act.

Sec. 2. *As used in sections 2 to 23, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Buyer" means a natural person who is solicited to purchase or who purchases the services of a grant writing service.*

Sec. 3.5. *"Director" means the Director of the Department of Business and Industry.*

Sec. 4. *(Deleted by amendment.)*

Sec. 5. *(Deleted by amendment.)*

Sec. 6. *"Grant" means any money given by a governmental entity or any other person or organization to finance a specific or general purpose.*

Sec. 7. *"Grant writing service" means a person who, with respect to obtaining any grant or other payment, loan or money, advertises, sells, provides or performs, or represents that he or she can or will sell, provide or perform, any of the following services in return for the payment of money or other valuable consideration:*

1. Writing an application for a grant for a buyer.

2. Obtaining a grant for a buyer.

3. Providing advice or assistance to a buyer in obtaining a grant.

Sec. 8. *(Deleted by amendment.)*

1 Sec. 9. 1. ~~Each~~ Except as otherwise provided in subsection 3, each
2 grant writing service regulated by the provisions of sections 2 to 23, inclusive, of
3 this act shall apply for registration on the form prescribed by the Division.

4 ~~2. At the time of application for registration, an applicant shall pay to the~~
5 ~~Division an administrative fee of \$25 and deposit the security required pursuant~~
6 ~~to section 10 of this act with the Division.~~

7 ~~3. Upon receipt of the security in the proper form and the payment of the~~
8 ~~administrative fee required by this section, the Division shall issue a certificate of~~
9 ~~registration to the applicant. A certificate of registration:~~

10 ~~(a) Is not transferable or assignable; and~~

11 ~~(b) Expires 1 year after it is issued.~~

12 ~~4. A registrant must renew a certificate of registration issued pursuant to~~
13 ~~this section before the certificate expires by submitting to the Division an~~
14 ~~application for the renewal of the certificate on a form prescribed by the~~
15 ~~Division.] Director. Upon approval of an application submitted pursuant to this~~
16 ~~subsection, the Director shall issue a certificate of registration to the grant~~
17 ~~writing service.~~

18 2. The Director shall publish on an Internet website maintained by the
19 Director a complete list of all grant writing services which are registered
20 pursuant to this section.

21 3. The provisions of sections 2 to 23, inclusive, of this act do not apply to a
22 grant writing service which provides services relating to an affordable housing
23 and community development project which is financed, in whole or in part, by tax
24 credits for low-income housing, private activity bonds or money provided by a
25 private entity, government, governmental agency or political subdivision of a
26 government, including, without limitation, any money provided pursuant to 12
27 U.S.C. § 1701q, 26 U.S.C. § 42, 42 U.S.C. § 8013 or 42 U.S.C. §§ 12701 et seq.

28 Sec. 10. (Deleted by amendment.)

29 Sec. 11. (Deleted by amendment.)

30 Sec. 12. (Deleted by amendment.)

31 Sec. 13. A grant writing service shall not:

32 1. Charge or receive any money or other valuable consideration before full
33 and complete performance of the services that the grant writing service has
34 agreed to perform for or on behalf of the buyer.

35 2. If the grant writing service makes a promise express or implied that the
36 grant writing service can or will obtain a grant for a buyer, charge or receive any
37 money or other valuable consideration before the buyer has received the grant.

38 ~~3. Charge or receive any money or other valuable consideration solely for~~
39 ~~referral of a buyer to a governmental entity or other person or organization~~
40 ~~which provides grants.~~

41 ~~4.] 2. Make a false or misleading representation in the offer or sale of the~~
42 ~~services of the grant writing service.~~

43 ~~5.] 3. Hire or obtain the services of a seller, as that term is defined in NRS~~
44 ~~599B.010, who does not comply with the provisions of chapter 599B of NRS.~~

45 4. Advertise his or her services or conduct business in this State unless the
46 grant writing service is registered pursuant to section 9 of this act.

47 5. Execute a contract with a buyer or receive any money or other valuable
48 consideration from a buyer before the grant writing service provides to the buyer:

49 (a) A written statement which must be printed in at least 10-point bold type
50 and which must include, without limitation:

51 (1) A detailed description of the services to be performed by the grant
52 writing service for the buyer and the total amount the buyer is obligated to pay
53 for those services;

(2) The physical address of the grant writing service and the non-toll free telephone number of the grant writing service;

(3) A statement that the grant writing service is registered pursuant to section 9 of this act; and

(4) Any other information required by the Director; and

(b) A copy of the certificate of registration issued to the grant writing service pursuant to section 9 of this act.

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. ~~16.1~~ A contract between a buyer and a grant writing service for the purchase of the services of the grant writing service:

~~(a)~~ 1. Must be in writing.

~~(b)~~ 2. Must be signed by the buyer.

~~(c)~~ 3. Must be dated.

~~(d)~~ 4. Must clearly indicate above the signature line that the buyer may cancel the contract within 5 days after execution of the contract by giving written notice to the grant writing service of his or her intent to cancel the contract. If the notice is mailed, the notice must be postmarked not later than 5 days after the execution of the contract.

~~2. A grant writing service shall retain a copy of each contract executed by a buyer and the grant writing service for not less than 2 years.~~

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. 1. [The provisions of sections 2 to 23, inclusive, of this act are not exclusive and do not relieve the parties or contracts subject thereto from compliance with any other applicable provision of law.]

2. The remedies provided in sections 20 and 21 of this act for a violation of any provision of sections 2 to 23, inclusive, of this act are in.] In addition to any other procedures or remedies for any violation or conduct provided for in any other law,

3., if the Director determines that a person has violated any provision of sections 2 to 23, inclusive, of this act, the Director may:

(a) Issue an order to the person to cease and desist from engaging in the practice or activity constituting the violation;

(b) Order the person to pay the costs of any investigation of the violation incurred by the Director;

(c) Order the person to provide restitution for any money or property improperly received or obtained by the person as a result of the violation; and

(d) Impose a civil penalty in an amount not to exceed \$10,000 for each violation.

2. Any violation of sections 2 to 23, inclusive, of this act constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

Sec. 23. ~~The Division~~ Director shall adopt such regulations as are necessary to carry out the provisions of sections 2 to 23, inclusive, of this act.

Sec. 24. NRS 599B.010 is hereby amended to read as follows:

599B.010 As used in this chapter, unless the context otherwise requires:

1. "Chance promotion" means any plan in which premiums are distributed by random or chance selection.

2. "Commissioner" means the Commissioner of Consumer Affairs.

3. "Consumer" means a person who is solicited by a seller or salesperson.

1 4. "Division" means the Consumer Affairs Division of the Department of
2 Business and Industry.

3 5. "Donation" means a promise, grant or pledge of money, credit, property,
4 financial assistance or other thing of value given in response to a solicitation by
5 telephone, including, but not limited to, a payment or promise to pay in
6 consideration for a performance, event or sale of goods or services. The term does
7 not include volunteer services, government grants or contracts or a payment by
8 members of any organization of membership fees, dues, fines or assessments or for
9 services rendered by the organization to those persons, if:

10 (a) The fees, dues, fines, assessments or services confer a bona fide right,
11 privilege, professional standing, honor or other direct benefit upon the member; and

12 (b) Membership in the organization is not conferred solely in consideration for
13 making a donation in response to a solicitation.

14 6. "Goods or services" means any property, ~~for~~

15 ~~— (a) Any property or product, whether tangible or intangible, real, personal or~~
16 ~~mixed, and any other article, commodity or thing for~~

17 ~~— (b) Any service, including, without limitation, financial service;~~

18 ~~— (c) A loan or any other extension of credit;~~

19 ~~— (d) Insurance;~~

20 ~~— (e) Any investment or opportunity for investment;~~

21 ~~— (f) A prize, bonus, award, gift or any other inducement to act; or~~

22 ~~— (g) Anything of value.~~

23 7. "Premium" includes any prize, bonus, award, gift or any other similar
24 inducement or incentive to purchase.

25 8. "Recovery service" means a business or other practice whereby a person
26 represents or implies that he or she will, for a fee, recover any amount of money
27 that a consumer has provided to a seller or salesperson pursuant to a solicitation
28 governed by the provisions of this chapter.

29 9. "Salesperson" means any person:

30 (a) Employed or authorized by a seller to sell, or to attempt to sell, goods or
31 services by telephone;

32 (b) Retained by a seller to provide consulting services relating to the
33 management or operation of the seller's business; or

34 (c) Who communicates on behalf of a seller with a consumer:

35 (1) In the course of a solicitation by telephone; or

36 (2) For the purpose of verifying, changing or confirming an order,

37 **—** except that a person is not a salesperson if his or her only function is to identify a
38 consumer by name only and he or she immediately refers the consumer to a
39 salesperson.

40 10. Except as otherwise provided in subsection 11, "seller" means any person
41 who, on his or her own behalf, causes or attempts to cause a solicitation by
42 telephone to be made through the use of one or more salespersons or any automated
43 dialing announcing device under any of the following circumstances:

44 (a) The person initiates contact by telephone with a consumer and represents or
45 implies:

46 (1) That a consumer who buys one or more goods or services will receive
47 additional goods or services, whether or not of the same type as purchased, without
48 further cost, except for actual postage or common carrier charges;

49 (2) That a consumer will or has a chance or opportunity to receive a
50 premium;

51 (3) That the items for sale are gold, silver or other precious metals,
52 diamonds, rubies, sapphires or other precious stones, or any interest in oil, gas or
53 mineral fields, wells or exploration sites or any other investment opportunity;

(4) That the product offered for sale is information or opinions relating to sporting events;

(5) *That the product offered for sale is the services of a grant writing service, as that term is defined in section 7 of this act;*

~~(6)~~ (7) That the product offered for sale is the services of a recovery service; or he or she makes a donation;

(b) The solicitation by telephone is made by the person in response to inquiries from a consumer generated by a notification or communication sent or delivered to the consumer that represents or implies:

(1) That the consumer has been in any manner specially selected to receive the notification or communication or the offer contained in the notification or communication;

(2) That the consumer will receive a premium if the recipient calls the person;

(3) That if the consumer buys one or more goods or services from the person, the consumer will also receive additional or other goods or services, whether or not the same type as purchased, without further cost or at a cost that the person represents or implies is less than the regular price of the goods or services;

(4) That the product offered for sale is the services of a recovery service; or

(5) That the consumer will receive a premium or goods or services if he or she makes a donation; or

(c) The solicitation by telephone is made by the person in response to inquiries generated by advertisements that represent or imply that the person is offering to sell any:

(1) Gold, silver or other metals, including coins, diamonds, rubies, sapphires or other stones, coal or other minerals or any interest in oil, gas or other mineral fields, wells or exploration sites, or any other investment opportunity;

(2) Information or opinions relating to sporting events; or

(3) Services of a recovery service.

11. "Seller" does not include:

(a) A person licensed pursuant to chapter 90 of NRS when soliciting offers, sales or purchases within the scope of his or her license.

(b) A person licensed pursuant to chapter 119A, 119B, 624, 645 or 696A of NRS when soliciting sales within the scope of his or her license.

(c) A person licensed as an insurance broker, agent or solicitor when soliciting sales within the scope of his or her license.

(d) Any solicitation of sales made by the publisher of a newspaper or magazine or by an agent of the publisher pursuant to a written agreement between the agent and publisher.

(e) A broadcaster soliciting sales who is licensed by any state or federal authority, if the solicitation is within the scope of the broadcaster's license.

(f) A person who solicits a donation from a consumer when:

(1) The person represents or implies that the consumer will receive a premium or goods or services with an aggregated fair market value of 2 percent of the donation or \$50, whichever is less; or

(2) The consumer provides a donation of \$50 or less in response to the solicitation.

(g) A charitable organization which is registered or approved to conduct a lottery pursuant to chapter 462 of NRS.

(h) A public utility or motor carrier which is regulated pursuant to chapter 704 or 706 of NRS, or by an affiliate of such a utility or motor carrier, if the solicitation is within the scope of its certificate or license.

1 (i) A utility which is regulated pursuant to chapter 710 of NRS, or by an
2 affiliate of such a utility.

3 (j) A person soliciting the sale of books, recordings, videocassettes, software
4 for computer systems or similar items through:

5 (1) An organization whose method of sales is governed by the provisions
6 of Part 425 of Title 16 of the Code of Federal Regulations relating to the use of
7 negative option plans by sellers in commerce;

8 (2) The use of continuity plans, subscription arrangements, arrangements
9 for standing orders, supplements, and series arrangements pursuant to which the
10 person periodically ships merchandise to a consumer who has consented in advance
11 to receive the merchandise on a periodic basis and has the opportunity to review the
12 merchandise for at least 10 days and return it for a full refund within 30 days after it
13 is received; or

14 (3) An arrangement pursuant to which the person ships merchandise to a
15 consumer who has consented in advance to receive the merchandise and has the
16 opportunity to review the merchandise for at least 10 days and return it for a full
17 refund within 30 days after it is received.

18 (k) A person who solicits sales by periodically publishing and delivering a
19 catalog to consumers if the catalog:

20 (1) Contains a written description or illustration of each item offered for
21 sale and the price of each item;

22 (2) Includes the business address of the person;

23 (3) Includes at least 24 pages of written material and illustrations;

24 (4) Is distributed in more than one state; and

25 (5) Has an annual circulation by mailing of not less than 250,000.

26 (l) A person soliciting without the intent to complete and who does not
27 complete, the sales transaction by telephone but completes the sales transaction at a
28 later face-to-face meeting between the solicitor and the consumer, if the person,
29 after soliciting a sale by telephone, does not cause another person to collect the
30 payment from or deliver any goods or services purchased to the consumer.

31 (m) Any commercial bank, bank holding company, subsidiary or affiliate of a
32 bank holding company, trust company, savings and loan association, credit union,
33 industrial loan company, personal property broker, consumer finance lender,
34 commercial finance lender, or insurer subject to regulation by an official or agency
35 of this State or of the United States, if the solicitation is within the scope of the
36 certificate or license held by the entity.

37 (n) A person holding a certificate of authority issued pursuant to chapter 452 of
38 NRS when soliciting sales within the scope of the certificate.

39 (o) A person licensed pursuant to chapter 689 of NRS when soliciting sales
40 within the scope of his or her license.

41 (p) A person soliciting the sale of services provided by a video service provider
42 subject to regulation pursuant to chapter 711 of NRS.

43 (q) A person soliciting the sale of agricultural products, if the solicitation is not
44 intended to and does not result in a sale of more than \$100 that is to be delivered to
45 one address. As used in this paragraph, "agricultural products" has the meaning
46 ascribed to it in NRS 587.290.

47 (r) A person who has been operating, for at least 2 years, a retail business
48 establishment under the same name as that used in connection with the solicitation
49 of sales by telephone if, on a continuing basis:

50 (1) Goods are displayed and offered for sale or services are offered for sale
51 and provided at the person's business establishment; and

52 (2) At least 50 percent of the person's business involves the buyer
53 obtaining such goods or services at the person's business establishment.

(s) A person soliciting only the sale of telephone answering services to be provided by the person or his or her employer.

(t) A person soliciting a transaction regulated by the Commodity Futures Trading Commission, if:

(1) The person is registered with or temporarily licensed by the Commission to conduct that activity pursuant to the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq.; and

(2) The registration or license has not expired or been suspended or revoked.

(u) A person who contracts for the maintenance or repair of goods previously purchased from the person:

(1) Making the solicitation; or

(2) On whose behalf the solicitation is made.

(v) A person to whom a license to operate an information service or a nonrestricted gaming license, which is current and valid, has been issued pursuant to chapter 463 of NRS when soliciting sales within the scope of his or her license.

(w) A person who solicits a previous customer of the business on whose behalf the call is made if the person making the call:

(1) Does not offer the customer any premium in connection with the sale;

(2) Is not selling an investment or an opportunity for an investment that is not registered with any state or federal authority; and

(3) Is not regularly engaged in telephone sales.

(x) A person who solicits the sale of livestock.

(y) An issuer which has a class of securities that is listed on the New York Stock Exchange, the American Stock Exchange or the National Market System of the National Association of Securities Dealers Automated Quotation System.

(z) A subsidiary of an issuer that qualifies for exemption pursuant to paragraph (y) if at least 60 percent of the voting power of the shares of the subsidiary is owned by the issuer.

Sec. 25. (Deleted by amendment.)

Sec. 25.5. The Director of the Department of Business and Industry shall adopt any regulations necessary to carry out the provisions of sections 2 to 23, inclusive, of this act on or before October 1, 2011.

Sec. 26. This act becomes effective ~~on July 1, 2011,~~ upon passage and approval for the purpose of adopting regulations and on October 1, 2011, for all other purposes.